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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/177,273	10/22/98	FUNIKAU	J 07037/129001

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ART UNIT  
1614

DATE MAILED:  
09/29/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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## Office Action Summary

Application No.  
09/177,273

Applicant

Ponikau

Examiner

Kevin E. Weddington

Group Art Unit

1614



Responsive to communication(s) filed on Aug 24, 1999

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claims

Claim(s) 1-50 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-50 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

 All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 6

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Claims 1-50 are presented for examination.

Applicant's information disclosure statement filed August 24, 1999 has been received and entered.

*Claim Rejections - 35 U.S.C. § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eisen (A) and Ramos et al. (R).

Eisen teaches the use of a combination containing steroids and antifungal agents to treat inflammatory disorders, such as mucositis. (See the abstract) Note particularly column 4, lines 41-49 teaches various antifungal agents which includes the applicant's preferred antifungal agents used to treat mucositis.

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Ramos et al. teach an oral administration of short-chain fatty acids used to reduce intestinal mucositis. Note the one of the short-chain fatty acids used in propionic acid, another one of the applicant's preferred antifungal agent.

The instant invention differs from the cited references in that the cited references do not teach the specific amounts of the antifungal agents are used to treat intestinal mucositis. However, to determine an amount having optimum effect against intestinal mucositis is well within the level of one having ordinary skill in the art, and the skilled artisan would have been motivated to determine optimum amounts to get the maximum effect of the claimed compounds.

Claims 1-50 are not allowed.

The remaining reference listed on the enclosed PTO-892 is cited to show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner K. Weddington whose telephone number is (703) 308-1235.

K. Weddington

September 22, 1999

*K. Weddington*  
**KEVIN E. WEDDINGTON**  
**PRIMARY EXAMINER**  
*Art Unit 1614*